

GEOSEARCH, INC.

IBLA 80-873

Decided May 24, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying protests against oil and gas lease offers W 70717 and W 70748.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Bona Fide Purchaser -- Rules of Practice: Appeals: Standing to Appeal -- Rules of Practice: Protests

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first priority offeror, as well as standing to appeal from a rejection of such protest.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First Qualified Applicant -- Rules of Practice: Protests

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the

service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; and David B. Kern, Esq., Milwaukee, Wisconsin, for appellees and Resource Service Company.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

This appeal is brought by Geosearch, Inc. (Geosearch), from that part of a July 21, 1980, decision of the Wyoming State Office, Bureau of Land Management (BLM), dismissing its protests to two lease offers drawn with first priority in the December 1979 simultaneous oil and gas filing for parcel WY 3220 (James L. Rother) and for parcel WY 3878 (Rosendo H. Benitez). 1/

The record shows that when BLM noted that the first drawees of these lease offers had common addresses with other offerors in the drawing, it requested and obtained copies of their agreements with their filing service. Subsequently, on July 2, 1980, Geosearch filed its protests of the offers as assignee of the second drawees, alleging violations of 43 CFR 3102.7 and 3112.5-2 (1979). 2/ Geosearch accompanied its protest with copies of its letter agreements with the second drawees dated June 21 and 24, 1980.

BLM dismissed the protests concluding: (1) that Geosearch was not a proper protestant because it did not show it was adversely affected, not having participated in the original drawing; (2) it did not present any evidence to show violations of either 43 CFR 3102.7 or 3112.5-2 (1979); and (3) the filing service agreements in question did not violate the regulations.

Geosearch has appealed contending that the State Office erred when it held Geosearch was not a proper protestant and that the leases should not issue in this instance because the form service agreement issued by Resource Service Company (RSC) together with a referral program violates the regulations. Appellant asks that the case be referred back to the State Office for further investigation and factfinding.

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1/ Appellant had originally appealed as to all five lease offers affected by the decision, but partially withdrew its appeal Nov. 20, 1980, as to W-69755, W-700064, and W-70113.

2/ Substantial changes in the regulations governing oil and gas leasing in general, and simultaneous oil and gas lease offers in particular, were implemented by revised regulations effective June 16, 1980. 43 FR 35156-66 (May 23, 1980). Since the lease offers involved in the appeal were filed and the drawing was conducted prior to the effective date of the revised regulations, the prior regulations are controlling.

James L. Rother and Rosendo H. Benitez have responded that the BLM dismissal should be affirmed because the identical service agreement has previously been approved by this Board and that, without supporting evidence, the allegations of violations of the regulations are merely speculation.

[1] First, we must note that Geosearch clearly had adequate standing to file these protests. When appellant filed the protests in these cases, it had previously acquired a 50 percent interest from the second drawees and, therefore, stood in the same position as the second drawees. Geosearch, Inc., 48 IBLA 190 (1980). Thus, as an interested party, it clearly had standing to protest and to appeal from a denial of its protest.

[2] However, as BLM properly noted, the party filing the protest has the burden of showing by competent evidence that there is an agreement giving the filing service an enforceable interest in the leases or that the regulations were otherwise violated. We have repeatedly held that a protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified. Phillip A. Kulin, 53 IBLA 57 (1981); Geosearch, Inc., 50 IBLA 347 (1980); Geosearch, Inc., 48 IBLA 51 (1980). Appellant has not presented any evidence either to BLM or with this appeal in support of the allegation of improprieties. Therefore, the protests were properly dismissed.

[3] Moreover, as BLM correctly indicated, the Board has carefully considered the exact same filing service agreement involved in these two lease offers and found that it did not violate either 43 CFR 3102.7 or 3112.5-2 (1979). Philip A. Kulin, *supra*; Geosearch, Inc., 48 IBLA 76, 77 (1980). Jack Zuckerman, 45 IBLA 337, 340 (1980); Ervin J. Powers, 45 IBLA 186, 189 (1980). We adhere to our prior rulings where we have specifically pointed out that the leasing service does not have an "interest" in the offer where the agreement provides that the client has the option of retaining the leasing service to sell any lease issued pursuant to an offer filed under the agreement in return for a specified commission. Such an arrangement is merely an option of which the offeror could avail himself after the drawing, as distinguished from a duty which the leasing service would enforce. Under these circumstances, the offeror is not precluded from certifying that he was the sole party in interest under 43 CFR 3102.7 (1979).

Appellant's allegations that RSC's referral program constitutes a violation of the regulations because the party making the referral would then receive a portion of the proceeds that a first drawee received from any resulting oil and gas lease is of no significance in this case. The referral program had no apparent bearing on the lease offers, since both successful drawees have submitted affidavits on appeal stating that they were not participants in the referral program. Both appellees specify they were not referred to RSC by any person and have not referred any other person to RSC. Accordingly, we need not further examine the merits of this program in this instance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

